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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2009-070

JOSEPH HORACE BILLINGSLEY, II  
3405 Nash Street  
Riverside, CA 92501

**STATEMENT OF ISSUES**

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California.

2. On or about February 9, 2009, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from JOSEPH HORACE BILLINGSLEY, II (Respondent). On or about January 13, 2009, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about June 9, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

“...”

7. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

1           “(b) The board may deny an application, or may order the issuance  
2 of a license with terms and conditions, for any of the causes specified in  
3 this chapter for suspension or revocation of a license, including, but not  
4 limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6,  
5 3755, 3757, 3760, and 3761.”

6           8.       Section 3752 of the Code states,

7           “A plea or verdict of guilty or a conviction following a plea of nolo  
8 contendere made to a charge of any offense which substantially relates to  
9 the qualifications, functions, or duties of a respiratory care practitioner is  
10 deemed to be a conviction within the meaning of this article. The board  
11 shall order the license suspended or revoked, or may decline to issue a  
12 license, when the time for appeal has elapsed, or the judgment of  
13 conviction has been affirmed on appeal or when an order granting  
14 probation is made suspending the imposition of sentence, irrespective of a  
15 subsequent order under Section 1203.4 of the Penal Code allowing the  
16 person to withdraw his or her plea of guilty and to enter a plea of not guilty,  
17 or setting aside the verdict of guilty, or dismissing the accusation,  
18 information, or indictment.”

19          9.       Section 3752.5 of the Code states:

20          “For purposes of Division 1.5 (commencing with Section 475), and  
21 this chapter [the Respiratory Care Practice Act], a crime involving bodily  
22 injury or attempted bodily injury shall be considered a crime substantially  
23 related to the qualifications, functions, or duties of a respiratory care  
24 practitioner.”

25          10.       Section 3754 of the Code states: “The board may deny an  
26 application for, or issue with terms and conditions, or suspend or revoke, or impose  
27 probationary conditions upon, a license in any decision made after a hearing, as provided  
28 in Section 3753.”

1 11. California Code of Regulations, title 16, section 1399.370, states, in  
2 pertinent part:

3 “For the purposes of denial, suspension, or revocation of a license, a  
4 crime or act shall be considered to be substantially related to the  
5 qualifications, functions or duties of a respiratory care practitioner, if it  
6 evidences present or potential unfitness of a licensee to perform the  
7 functions authorized by his or her license or in a manner inconsistent with  
8 the public health, safety, or welfare. Such crimes or acts include but are not  
9 limited to those involving the following:

10 (a) Violating or attempting to violate, directly or indirectly, or  
11 assisting or abetting the violation of or conspiring to violate any provision  
12 or term of the Act.

13 “...

14 (c) Conviction of a crime involving driving under the influence or  
15 reckless driving while under the influence.

16 “...”

#### 17 COST RECOVERY

18 12. Section 3753.5, subdivision (a) of the Code states:

19 “In any order issued in resolution of a disciplinary proceeding  
20 before the board, the board or the administrative law judge may direct any  
21 practitioner or applicant found to have committed a violation or violations  
22 of law to pay to the board a sum not to exceed the costs of the investigation  
23 and prosecution of the case.”

24 13. Section 3753.7 of the Code states:

25 “For purposes of the Respiratory Care Practice Act, costs of  
26 prosecution shall include attorney general or other prosecuting attorney  
27 fees, expert witness fees, and other administrative, filing, and service fees.”

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1                   14     Section 3753.1 of the Code states:

2                   “(a) An administrative disciplinary decision imposing terms of  
3                   probation may include, among other things, a requirement that the  
4                   licensee-probationer pay the monetary costs associated with monitoring the  
5                   probation.

6                   “...”

7                   **FIRST CAUSE FOR DENIAL OF LICENSE**

8                   (Conviction of Crimes Substantially Related to the Qualifications,  
                    Functions, or Duties of a Respiratory Care Practitioner)

9                   15.     Respondent’s application is subject to denial under section 3750, as  
10                  defined by section 3750, subdivision (d), and 3752.5 of the Code, and Title 16 of the  
11                  California Code of Regulations, section 1399.370, in that Respondent has been convicted  
12                  of crimes substantially related to the qualifications, functions, or duties of a Respiratory  
13                  Care Practitioner, as more particularly described in paragraphs 16 through 26, below.

14                  16.     On or about December 8, 1989, Respondent was arrested in the  
15                  State of Michigan for violations of Michigan Vehicle Code section M1020 [operator under  
16                  the influence of liquor with a blood alcohol content of .10%] and Michigan Vehicle Code  
17                  section M1110 [operator under the influence of liquor & controlled substances].

18                  17.     On or about December 20, 1989, respondent was charged in the  
19                  case entitled *City of East Lansing v. Joseph Horace Billingsley*, State of Michigan Judicial  
20                  District Case No. 89-3117, with the following criminal counts:

21                               (a) Operator under the influence of liquor with a blood alcohol  
22                               content of .10% in violation of Michigan Vehicle Code section M1020;

23                               (b) Operator under the influence of liquor & controlled substances  
24                               in violation of Michigan Vehicle Code section M1110.

25                  18.     On or about July 6, 1990, Respondent plead guilty to the following  
26                  charge in Case 89-3117:

27                               (a) Operator under the influence of liquor & controlled substances  
28                               in violation of Michigan Vehicle Code section M1110.

1                   19.     On or about July 6, 1990, Respondent was sentenced in Case  
2 89-3117 to pay a fine in the amount of \$185.00.

3                   20.     On or about October 20, 2004, Respondent was arrested for  
4 violating resisting or deterring an officer with force or violence in violation of California  
5 Penal Code section 69, a felony and obstructing, resisting or deterring a public officer in  
6 the lawful exercise of his duties in violation of California Penal Code section 148(a)(1), a  
7 misdemeanor.

8                   21.     On or about October 22, 2004, Respondent was charged in the case  
9 entitled *People of the State of California v. Joseph Horace Billingsley II*, San Bernardino  
10 Superior Court Case MSB079673, with the following criminal counts:

11                             (a) Obstructing, resisting or deterring a public officer in the lawful  
12 exercise of his duties in violation of California Penal Code section  
13 148(a)(1), a misdemeanor;

14                             (b) Disorderly conduct, person under the influence of alcohol/drugs  
15 in violation of California Penal Code section 647(f).

16                   22.     On or about November 1, 2004, Respondent was convicted in Case  
17 MSB079673 to an amended third count of disturbing the peace by loud/unreasonable noise  
18 in violation of California Penal Code section 415(2).

19                   23.     On or about November 1, 2004, Respondent was sentenced in Case  
20 MSB079673 to pay a fine in the amount of \$340.00.

21                   24.     On or about March 21, 2007, Respondent was arrested for inflicting  
22 corporal punishment on a spouse in violation of California Penal Code section 273.5(a), a  
23 misdemeanor.

24                   25.     On or about March 23, 2007, Respondent was charged in the case  
25 entitled *People of the State of California v. Joseph Horace Billingsley II*, Riverside  
26 Superior Court Case RIM495758, with the following criminal counts:

27                             (a) Inflicting corporal punishment on a spouse in violation of  
28 California Penal Code section 273.5(a), a misdemeanor;

1 (b) Battery on a spouse or cohabitating partner in violation of  
2 California Penal Code section 243(E)(1), a misdemeanor.

3 26. On or about May 4, 2007, Respondent was convicted in Case  
4 RIM495758 to an amended third count of disturbing the peace by loud/unreasonable noise  
5 in violation of California Penal Code section 415(2).

6 27. On or about May 4, 2007, Respondent was sentenced in Case  
7 RIM495758 to thirty-six months (36) probation, 30 days in County Jail, 20 hours  
8 community service, a 52 week domestic violence program, a 4<sup>th</sup> Amendment Waiver and  
9 to pay fines and fees in the amount of \$730.00.

10 **SECOND CAUSE FOR DENIAL OF LICENSE**

11 (Conviction of Crimes Involving Driving Under the Influence)

12 28. Respondent's application is subject to denial under section 3750, as  
13 defined by section 3750, subdivision (d), and 3752 of the Code, and Title 16 of the  
14 California Code of Regulations section 1399.370, subdivision (c), in that he was convicted  
15 of a crime involving driving under the influence of alcohol, as more particularly described  
16 in paragraphs 16 through 19, above, which are hereby incorporated by reference and  
17 realleged as if fully set forth herein.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters  
20 herein alleged, and that following the hearing, the Board issue a decision:

21 1. Denying the application of Joseph Horace Billingsley, II for a  
22 Respiratory Care Practitioner License;

23 2. Directing Joseph Horace Billingsley, II to pay the Respiratory Care  
24 Board of California the costs of the investigation and enforcement of this case, and if  
25 placed on probation, the costs of probation monitoring; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: September 28, 2009

Original signed by Liane Freels for: \_\_\_\_\_  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
State of California  
Complainant

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